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The case must therefore go back to the lower Appellate Court in order that the appellants may have such an opportunity. When the record goes back to the Judge, he shall fix a day for the hearing of the case not less than ten days from the arrival of the record in his Court; so that the parties may have an opportunity of raising any objection to the award that they may think fit; and the learned Judge will then dispose of the objections, provided they are filed within ten days from the date of the arrival of the record.

The costs will abide the result.

Case remanded.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

1891 *June* 8.

RAJENDRA NARAIN BAGCHI (PLAINTIFF) *v.* WATSON & Co. (DEFENDANTS).*

Transfer of Property Act (IV of 1882), s. 135—Transfer of actionable claim.

The first paragraph of s. 135 of the Transfer of Property Act has no application to a case in which the debtors deny the existence of the claim altogether, and where the purchaser of the claim has to obtain judgment affirming the claim before any satisfaction is made or tendered.

Clause (*d*) of that section is not limited to cases where the judgment of a Court affirming the claim has been delivered, or where the claim is made clear by evidence *before* the sale of the claim.

Girish Chandra v. *Kasiswari Debi* (1), *Khosdeb Biswas* v. *Satis Mondul* (2), and *Subbarnmal* v. *Varbatarsama* (3), followed. *Jani Begum* v. *Jahangir Khan* (4) dissented from.

ONE Sriram Chowdhry was the owner of certain maurasi and putni taluqs, and the defendants were ijaradars under him of those mehals by virtue of a lease dating from 1288 (1881). On the death of Sriram Chowdhry, his widow, Hari Dasi Debi, on behalf of her minor sons, executed a kobala, dated 25th Choitro 1296 (6th April 1890), in favour of the plaintiff for the arrears of

* Appeal from Appellate decree No. 1103 of 1890 against the decree of W. H. Page, Esq., Judge of Moorshedabad, dated the 9th of June 1890, reversing the decree of Baboo Raj Chandra Sannyal, Subordinate Judge of Moorshedabad, dated the 20th of December 1889.

(1) I. L. R., 13 Calc., 145.
(2) I. L. R., 15 Calc., 436.
(3) I. L. R., 10 Mad., 289.
(4) I. L. R., 9 All., 476.

rent due from the defendants to her for the years 1292 to 1294 (1885 to 1887) inclusive. The plaintiffs brought this suit for those arrears, amounting to Rs. 2,873.

The defence was that the plaintiff, being a member of a joint Hindu family, was incompetent to sue alone; that the kobala was fraudulent and collusive and executed by Hari Dasi to defraud the defendants of a large sum of money due to them from her; that the kobala was without consideration; that, with the view of avoiding the provisions of s. 135 of the Transfer of Property Act, the plaintiff had falsely stated the amount of the consideration for the kobala; that an abatement of the ijara rent was allowed them by Sriram Chowdhry; and that the rent which was due after such abatement had been paid by them, and there was therefore nothing due to Hari Dasi or to the plaintiff.

The Subordinate Judge decided that the plaintiff was entitled to sue alone; that the kobala was made in good faith and for good consideration; and that there was no abatement of rent allowed. He therefore gave the plaintiff a decree for the amount claimed.

The Judge on appeal held that, even assuming the kobala was *bonâ fide* and executed for good consideration, the plaintiff could not sue alone; but that it was not a *bonâ fide* transaction for good consideration. He therefore reversed the decision of the Subordinate Judge and dismissed the suit.

From this decision the plaintiff appealed to the High Court.

Baboo *Rash Behari Ghose* and Baboo *Saroda Churn Mitter* for the appellant.

Mr. *Evans* and Baboo *Jogesh Chunder Roy* for the respondents.

The judgment of the Court (PRINSEP and BANERJEE, JJ.) was as follows:—

This was a suit by the plaintiff-appellant to recover a certain sum of money which is said to have been due from the defendants to the minor sons of one Sriram Chowdhry on account of *ijara* rent, and which the plaintiff claims under a transfer from the guardian of the minors. The defendants denied the plaintiff's right to sue alone, and they also denied the existence of the debt, and the reality and *bonâ fides* of the transfer to the plaintiff, and urged

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that the payment of consideration for the transfer was falsely stated in order to escape the provisions of section 135 of the Transfer of Property Act, and that the plaintiff was in no case entitled to recover more than the price he may have actually paid with interest and expenses of the sale.

The first Court disallowed all the objections of the defendants and gave plaintiff a decree for the entire claim. On appeal the District Judge has reversed that decision and dismissed the claim, holding that, even if the transfer to the plaintiff be taken to have been for consideration, such consideration not being shown to have been the plaintiff's self-acquired money, plaintiff, who is a member of a joint Hindu family, was not entitled to maintain this suit alone, and further that in reality the transfer was not *bonâ fide* for consideration.

In second appeal it is contended, on behalf of the plaintiff, that the decision of the District Judge is wrong, because the transfer to the plaintiff having been notified by the transferor to the defendants, the debtors, and having been further admitted by her in her deposition as a witness, the defendants were bound, under section 133 of the Transfer of Property Act, to give effect to the transfer, and it was not competent to them to question the plaintiff's right to sue for the debt either on the ground of his having other co-sharers interested with him in the claim, which was the subject-matter of the transfer, or on the ground of the transfer not being *bonâ fide* for consideration.

With reference to the former of these two grounds of objection to which the Lower Appellate Court has given effect, it is sufficient to say that though, as a general rule, no one can enforce a claim by suit if he is not beneficially interested in the subject-matter thereof, that rule is subject to exceptions, and that the case of the ostensible transferee of a debt, after the transfer is notified to the debtor, is an instance of such an exception by reason of the provisions of section 133 of the Transfer of Property Act. The reason for that provision of the law is obviously this, that every debtor is bound to pay his debt to his creditor or to any other person to whom the creditor directs him to pay it. It was argued for the respondents that if the debtor is aware that some person other than the party to whom the creditor directs him to

pay his debt is by reason of a prior or simultaneous transfer from the creditor justly entitled to recover, it would be allowing the debtor and creditor to commit a gross fraud if the person named by the latter is held entitled to enforce his claim. But the answer to this is that it is always in the power of a prior assignee or a co-assignee to protect himself by insisting upon a notice in his favor from the assignor to the debtor at the time of the transfer to him.

The second objection of the debtors which has been allowed by the learned Judge below to prevail seems to us to be equally untenable. The creditor having admitted the transfer and given notice of it to the debtors, it was no business of theirs to enquire whether the transfer was *bonâ fide* for consideration. Here it was urged for the respondents that an enquiry into the amount of the consideration was necessary in order to enable the debtors to avail themselves of the provisions of section 135 of the Transfer of Property Act, and to obtain their discharge by paying to the purchaser the price paid with interest and incidental expenses. If the first paragraph of section 135 be applicable to this case, no doubt an enquiry into the amount of consideration would be necessary. But we do not think that the first paragraph of section 135 has any application to a case like the present in which the debtors deny the existence of the debt altogether, and the purchaser of the debt has to obtain judgment affirming the claim before any satisfaction is made or tendered. Clause (*d*) of the section, by providing that nothing in the first paragraph of the section applies where the judgment of a Court has been, or is about to be, delivered affirming the claim, makes the matter clear. This view is in accordance with the decision of this Court in the cases of *Girish Chandra* v. *Kasiswari Debi* (1) and *Khosdeb Biswas* v. *Satis Mondul* (2), and of the Madras High Court in *Subbammal* v. *Venkatarama* (3). The Allahabad High Court has, it is true, taken a different view in the case of *Jani Begum* v. *Jahangir Khan* (4), and the learned counsel for the respondent strongly relied upon that case and the reasons therein given, and contended that the first paragraph of section 135 applied to this case, and that

(1) I. L. R., 13 Calc., 145.
(2) I. L. R., 15 Calc., 436.
(3) I. L. R., 10 Mad., 289.
(4) I. L. R., 9 All., 476.

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clause (*d*) refers to cases where the sale takes place after judgment has been delivered affirming the claim or after it is made clear by evidence and is ready for judgment. But after careful consideration of his argument, we see no reason to question the correctness of the decisions of this Court.

The language of clause (*d*) fully bears out our view. It would, we think, be wrong to limit the clause to cases where the judgment of a Court affirming the claim has been delivered, or where the case is made clear by evidence before the sale of the claim, since, if that had been the intention, it would have been expressed by adopting the same grammatical structure in this clause as in the three preceding clauses, and by using words such as these:—"Where it is made after the judgment of a competent Court, &c." Nor is there anything unreasonable in this view, though it may not secure the discouraging of speculative purchases, the main object of the section, to the same extent that the opposite view does. There is good reason for compelling a speculative purchaser of an actionable claim to be satisfied if he gets from the party liable the price paid with interest and incidental expenses before the claim is made certain by suit; but the reason does not hold equally good after he has got his claim affirmed by suit in Court. It would be discouraging speculative purchasers sufficiently if they are told that it is in the power of those against whom claims are purchased to obtain discharge by paying them the price paid with interest and expenses, but it would be something more than discouraging such purchases and would indeed practically amount to prohibiting them if purchasers were told that they may recover nothing if they fail to establish the claims purchased, but they shall in no case get a pice more than the amount they have actually paid as price and expenses with interest. It was argued for the respondents that, if the above view is correct, it will be in the power of the purchaser by falsely overstating the price to prevent the debtor from getting the benefit of the section. We do not think that this would follow. Where the debtor without denying the claim offers to pay the purchaser the price paid by him with interest and expenses of the sale and merely disputes the amounts of these items, there, if the purchaser has to obtain judgment of the Court determining such

amounts, it would not be a judgment affirming the claim, and so the case would not come under the exception in clause (*d*) of section 135, and the first paragraph of the section would apply. But that is not the case here.

We think, therefore, that the two grounds upon which the Court of appeal below has dismissed the suit are both wrong in law, and the judgment appealed against must be reversed; and as the other questions raised in the case have not been disposed of by the lower Appellate Court, the case must be remanded to that Court for their determination. Costs will abide the result.

Appeal allowed and case remanded.

J. V. W.

Before Mr. Justice Macpherson and Mr. Justice Ameer Ali.

RADHA KISHEN LALL (JUDGMENT-DEBTOR) *v.* RADHA PERSHAD SING (DECREE-HOLDER).*

1891. *April* 24.

Limitation—Execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 43, 373, 374, 464—Separate applications to execute reliefs of a different character.

The Code of Civil Procedure does not prevent a person from making separate and successive applications for execution of a decree, giving reliefs of different characters in respect to each such relief.

Sections 43, 373 and 374 do not apply to proceedings for execution of decree.

Radha Charan v. *Man Singh* (1) dissented from.

Wajihan v. *Biswanath Pershad* (2) followed.

IN this case the decree-holder obtained a decree against the judgment-debtor, requiring the latter to remove his hut, which stood on the land decreed. The decree also contained an order for the delivery of the disputed land, and further awarded costs to the decree-holder. Out of the three reliefs thus granted, the decree-holder first applied for execution for costs only, and full satisfaction of this part of the decree was certified to the Court.

Subsequently the decree-holder applied for execution of the other reliefs granted by the decree. In the first Court this application

* Appeal from order No. 17 of 1891, against the order of J. G. Charles, Esq., Judge of Shahabad, dated the 1st of September 1890; affirming the order of Baboo Promotho Nath Chatterjee, Munsiff of Buxar, dated the 23rd of May 1890.

(1) I. L. R., 12 All., 392. (2) *Ante. p.* 462.